

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CECIL JOHNSON

Plaintiff,

v.

DR. BRUCE LEVY, in his official capacities
as the Chief Medical Examiner for the
State of Tennessee and Medical
Examiner for the Metropolitan
Government of Nashville and
Davidson County, Tennessee; and

RICKY BELL, in his official capacity as
Warden, Riverbend Maximum
Security Institution.

No. 3:09-1139

DEATH PENALTY CASE

EXECUTION DATE 12/2/09 at 1:00 a.m.

**REPLY TO DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

The Plaintiff, Cecil Johnson, hereby replies to the State's Response to his motion for a preliminary injunction and temporary restraining order. The Plaintiff specifically responds to the Affidavit of Bruce Levy, M.D., as follows:

1. Dr. Levy stated the following reasons for the necessity of an autopsy:

a) the autopsy is necessary to confirm that the execution was carried out according to state law;

b) the autopsy is necessary to rule out any possibility that the State failed to protect the rights of the inmate during the execution and insure that the execution was carried out

in the manner required by law; and

c) any time that the State takes a person's life by execution it is in the public interest that the autopsy be performed by an authority that is independent of the agency that conducted the execution.

2. On February 4, 2009, Steve Henley was executed by the State of Tennessee using the identical protocol to the manner in which the State intends to execute Plaintiff.

3. Beginning on March 8, 2009, Kelly A. Gleason began requesting a copy of the Steve Henley autopsy report. See attached Declaration of Kelly A. Gleason.

4. On an approximately monthly basis, Ms. Gleason requested the Henley autopsy. She last requested a copy of the autopsy, Tuesday November 24, 2009. Each time she was told the autopsy is not complete. It still has not been released.

5. Defendant Levy's alleged interest does not withstand scrutiny where he refuses to issue a report nearly a year after supposedly performing an autopsy. That alleged interest, which has been shown by his own actions to be insignificant, cannot trump the plaintiff's sincerely held religious beliefs, and his constitutional rights guaranteed by the 1st, 9th, and 14th amendments.

6. The failure to release the Henley autopsy report calls into question the independence of Defendant Levy from the State agents carrying out Plaintiff's execution.

7. As the Supreme Court has recognized, it is a long-standing principle of the common law that every person "has a right to determine what shall be done with his own body." *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 269 (1990)(citation omitted). This Court must fully respect that hallowed right. Plaintiff also has a substantive due process right and a right to personal autonomy (*Planned Parenthood v. Casey*, 505 U.S. 833 (1992))

which guarantee him the right to control the destiny of his own body. Defendants have no claim over his body which trumps Plaintiff's First, Ninth, and Fourteenth Amendment rights over his own body and the integrity of his body. The First, Ninth, and Fourteenth Amendments prohibit Defendants from desecrating his body through an autopsy which Plaintiff has clearly and unequivocally declared to be against his religious beliefs, his wishes, and his exercise of personal autonomy.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Donald E. Dawson", is written over a horizontal line.

Donald E. Dawson, BPR #010723
POST-CONVICTION DEFENDER
530 Church Street - Suite 600
Nashville, Tennessee 37243
(615) 741-9385

James Winston Tiller, BPR #023932
Tiller-Allison PLLP
501 Union St, Ste. 502
Nashville, TN 37219

CERTIFICATE OF SERVICE

I certify that on December 1, 2009, I sent a copy by email of the foregoing to:

Bob Cooper via Pam Lorch
ATTORNEY GENERAL AND REPORTER
500 Charlotte Avenue
Nashville, Tennessee 37243; and

Sue B. Cain via Lora Fox
Director of Law
Law Department for the Metropolitan Government of
Nashville and Davidson County, Tennessee
225 Polk Avenue - Suite 210
Nashville, Tennessee 37203

A handwritten signature in black ink, appearing to be "D. L. Fox", written over a horizontal line.

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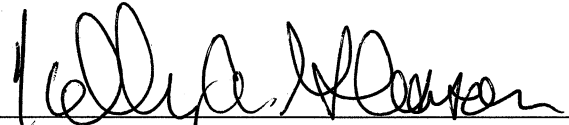
DECLARATION OF KELLY A. GLEASON

Declarant Kelly A. Gleason states as follows:

1. I am an adult resident citizen of Nashville, Davidson County, Tennessee.
2. I am an attorney licensed to practice in Tennessee, Kentucky, and the Supreme Court of the United States. I am currently employed as an Assistant Post-Conviction Defender in the Office of the Post-Conviction Defender. I began employment in August 2004.
3. On March 9, 2009, I filed a formal request with the Office of the Medical Examiner, Respondent in this case, pursuant to Tennessee Public Records Act, T.C.A. Section 10-7-503(a)(2008) for the autopsy of Steve Henley who was executed by lethal injection on February 4, 2009 at Riverbend Maximum Security Institution in Nashville, Tennessee. See attachment hereto.
4. After receiving no response from Respondent Levy's office for several weeks, I began calling the Office of the Medical Examiner on approximately a monthly basis to request the autopsy report. I have been repeatedly told that it has not been completed. On one occasion, the assistant told me that she had conveyed to Dr. Levy that more than one person had requested the autopsy.

5. The last telephone call I made to the Office of the Medical Examiner was in the morning on Tuesday, November 24, 2009. I was again told that the report was not complete.

6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Kelly A. Gleason

12/1/09

Date

TRANSMISSION VERIFICATION REPORT

TIME : 03/09/2009 12:42
NAME : PCDO
FAX : 6157419430
TEL : 6157419331
SER.# : BROE8J814315

DATE, TIME	03/09 12:42
FAX NO./NAME	97431890
DURATION	00:00:20
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

FAX TRANSMITTAL FORM

From: Kelly A. Gleason
Assistant Post-Conviction Defender
530 Church Street, Suite 600
Nashville, Tennessee 37243
Phone: (615) 741-9341/ FAX: (615) 741-9430

To: Office of the Medical Examiner
FAX (615) 743-1890

Date: March 9, 2009

Re: Request for a copy of the autopsy of Steve Henley

Pages: 1 (including this page)

Please consider this as a request for a copy of the autopsy of Steve Henley, #109572, Riverbend Maximum Security Institution, 7475 Cockrill Bend Blvd, Nashville, TN 37209-1048. Mr. Henley was executed on February 4, 2009. His date of birth was 11/25/1953.

This is a formal request for access to records pursuant to Tennessee Public Records Act, T.C.A. Section 10-7-503(a)(2008) and all other authority permitting access to such information.

Thank you for your attention in this matter and if you have questions, please call me at (615) 741-9341. I am also available by email at Gleasonk@tnpcdo.net.

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Assistant Post-Conviction Defender
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Nashville, Tennessee 37243
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